

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)
) No. _____
) Violations: Title 15, United States
v.) Code, Sections 77q(a) & 77x, and
) Title 18, United States Code,
ANTHONY F. D'AGOSTINO) Sections 1341 & 1343
)

COUNT ONE

The DECEMBER 2011 GRAND JURY charges:

1. At times material to this indictment:

a. Defendant ANTHONY F. D'AGOSTINO was the owner, Chief Executive Officer, and President of Commercial Mortgage and Finance Company ("Commercial Mortgage") located in Rockford, Illinois.

b. Commercial Mortgage was in the business of making commercial real estate loans.

c. Commercial Mortgage raised capital by selling 6 month and 9 month Promissory Notes to investors.

d. Commercial Mortgage also raised capital by selling instruments known as "Certificates of Participation" to investors. These Certificates of Participation represented that the purchasing investors were participating in certain loans made by Commercial Mortgage.

2. From at least as early as August 1997, and continuing to at least October 8, 2008, at Rockford, in the Northern District of Illinois, Western Division, and elsewhere,

ANTHONY F. D'AGOSTINO,

defendant herein, knowingly devised and engaged in a scheme to defraud investors in the Commercial Mortgage Promissory Notes and Certificates of Participation, and to obtain money, funds, credit, and property belonging to the investors by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

3. It was the object of this scheme that defendant caused Commercial Mortgage to obtain capital from investors through the sale of Promissory Notes and Certificates of Participation, while exposing the investors to total losses of approximately \$20,000,000.

4. It was a part of the scheme that defendant concealed from the investors the poor financial condition of Commercial Mortgage, that Commercial Mortgage had a negative net worth, and that the negative net worth of Commercial Mortgage steadily increased during the years that defendant owned the company.

5. It was further a part of the scheme that defendant concealed from the investors that Commercial Mortgage was operated as a *Ponzi* scheme and that capital raised from the sales of new Promissory Notes and Certificates of Participation was used to pay principal and interest owed on older Promissory Notes and Certificates of Participation.

6. It was further a part of the scheme that defendant falsely represented to certain investors that the financial condition of Commercial Mortgage was strong and that the company was doing well.

7. It was further a part of the scheme that defendant caused Commercial Mortgage's employees to tell investors that the financial condition of Commercial Mortgage was strong and that the company was doing well.

8. It was further a part of the scheme that defendant falsely represented to certain investors that investments with Commercial Mortgage were safe and secure.

9. It was further a part of the scheme that defendant caused Commercial Mortgage's employees to tell investors that investments with Commercial Mortgage were safe and secure.

10. It was further a part of the scheme that defendant falsely represented to the investors who purchased Certificates of Participation that their investments were secured by specific loans made by Commercial Mortgage.

11. It was further a part of the scheme that defendant refused to provide balance sheets and other financial documents of Commercial Mortgage to the investors.

12. It was further a part of the scheme that defendant instructed Commercial Mortgage's employees to refuse to provide balance sheets and other financial documents of Commercial Mortgage to the investors.

13. It was further a part of the scheme that defendant and his family profited from this scheme in that Commercial Mortgage paid significant salaries to defendant, his son, and his wife, despite the fact that the financial condition of the company steadily deteriorated.

14. On or about December 12, 2007, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor A," which letter advised Investor A that her Promissory Note would mature in 28 days, and inquired whether Investor A wished to roll over the principal in this note, that envelope being delivered to: Investor A at an address on Dry Creek Bend in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT TWO

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about December 20, 2007, at Roscoe, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor B," which letter advised Investor B that his Promissory Note would mature in 25 days, and inquired whether Investor B wished to roll over the principal in this note, that envelope being delivered to: Investor B at an address on Tybow Trail in Roscoe, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT THREE

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about February 7, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor C," which letter advised Investor C that his Promissory Note would mature in 21 days, and inquired whether Investor C wished to roll over the principal in this note, that envelope being delivered to: Investor C at a post office box in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT FOUR

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about April 29, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor D," which letter advised Investor D that her Promissory Note would mature in 21 days, and inquired whether Investor D wished to roll over the principal in this note, that envelope being delivered to: Investor D at an address on Cunningham Street in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT FIVE

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about May 16, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor E," which letter advised Investor E that his Promissory Note would mature in 28 days, and inquired whether Investor E wished to roll over the principal in this note, that envelope being delivered to: Investor E at an address on 11th Street in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT SIX

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about May 29, 2008, at Davis Junction, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor F," which letter advised Investor F that his Promissory Note would mature in 27 days, and inquired whether Investor F wished to roll over the principal in this note, that envelope being delivered to: Investor F at an address on 11th Street in Davis Junction, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT SEVEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes, that envelope being delivered to: "Investor G" at an address on 20th Street in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT EIGHT

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 1, 2008, at Freeport, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes, that envelope being delivered to: "Investor H" at an address on Bradmar Drive in Freeport, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT NINE

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes, that envelope being delivered to: "Investor I" at an address on Muirfield Lane in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT TEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 1, 2008, at Machesney Park, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes, that envelope being delivered to: "Investor J" at an address on Kingsley Drive in Machesney Park, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT ELEVEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes, that envelope being delivered to: "Investor K" at an address on Browns Beach Road in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT TWELVE

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 2, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a check, drawn on the bank account of "Investor L," in the amount of \$50,000, payable to Commercial Mortgage and Finance Co., that envelope being delivered to: Commercial Mortgage & Finance Co., 115 Seventh Street, Rockford, Illinois 61104;

In violation of Title 18, United States Code, Section 1341.

COUNT THIRTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 29, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor M," which letter advised Investor M that her Promissory Note would mature in 27 days, and inquired whether Investor M wished to roll over the principal in this note, that envelope being delivered to: Investor M at an address on Braewild Road in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT FOURTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about August 29, 2008, at South Beloit, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing a letter addressed to "Investor N," which letter advised Investor R that her Promissory Note would mature in 30 days, and inquired whether Investor N wished to roll over the principal in this note, that envelope being delivered to: Investor N at an address on Kirane Court in South Beloit, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT FIFTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about September 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing an interest check, drawn on the bank account of Commercial Mortgage, in the amount of \$359.17, payable to "Investor O," that envelope being delivered to: Investor O at an address on Valentine Place in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT SIXTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about September 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing an interest check, drawn on the bank account of Commercial Mortgage, in the amount of \$143.15, payable to "Investor P," that envelope being delivered to: Investor P at an address on Edgewood Circle in Rockford, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT SEVENTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. On or about September 1, 2008, at Machesney Park, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be delivered by mail, according to the direction thereon, an envelope containing an interest check, drawn on the bank account of Commercial Mortgage, in the amount of \$1,218.75, payable to "Investor Q," that envelope being delivered to: Investor Q at an address on North Second Street in Machesney Park, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT EIGHTEEN

The DECEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. In or about September 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause to be transmitted by means of a wire communication in foreign commerce from Italy, to Rockford, in the Northern District of Illinois, Western Division, certain sounds, namely a telephone conversation in which "Investor R" was told that she had nothing to worry about regarding her investments with Commercial Mortgage, and that everything was fine with the company;

In violation of Title 18, United States Code, Section 1343.

COUNT NINETEEN

1. Paragraphs 1, 3 through 9, and 11 through 13 of Count One of this indictment are realleged and incorporated herein as if fully set forth.

2. From at least as early as August 1997, and continuing to at least October 8, 2008, at Rockford, in the Northern District of Illinois, Western Division, and elsewhere,

ANTHONY F. D'AGOSTINO,

defendant herein, in the offer and sale of securities, namely the Commercial Mortgage Promissory Notes, directly and indirectly, knowingly and willfully: (a) employed a device, scheme, and artifice to defraud; (b) obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers and prospective purchasers of such securities, namely the Promissory Notes described in Count One.

3. On or about August 1, 2008, at Rockford, in the Northern District of Illinois, Western Division,

ANTHONY F. D'AGOSTINO,

defendant herein, for the purpose of executing the aforesaid scheme, and attempting to do so, knowingly did cause the mails to be used to send envelopes to current and prior investors

of Commercial Mortgage, each envelope containing a letter which offered special, higher interest rates for the purchase of new Promissory Notes;

In violation of Title 15, United States Code, Sections 77q(a) and 77x.

FORFEITURE ALLEGATION

The DECEMBER 2011 GRAND JURY further charges:

1. The allegations of Counts One thru Eighteen of this Indictment are hereby realleged and incorporated as though fully set forth herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of the violations of Title 18, United States Code, Sections 1341 and 1343, as alleged in the foregoing Indictment,

ANTHONY F. D'AGOSTINO,

defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all right, title, and interest he may have in any property, real and personal, constituting and derived, directly and indirectly, from gross proceeds traceable to the commission of the offenses.

3. The interests of defendant subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), include but are not limited to the following property: funds in the amount of \$20,000,000.

4. If any of the forfeitable property described above, as a result of any act or omission by defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;

- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property, including but not limited to, the real property commonly known as 5070 Dynasty Court, Rockford, Illinois, and legally described as follows:

LOT NINETY-SEVEN (97) AND NINETY-EIGHT (98), AS DESIGNATED UPON PLAT NO. 6 OF DEER POINTE ESTATE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 44 NORTH, RANGE 2, EAST OF THE THIRD PRINCIPAL MERIDIAN, THE PLAT OF WHICH SUBDIVISION IS RECORDED IN BOOK 40 OF PLATS ON PAGE 145A IN THE RECORDER'S OFFICE OF WINNEBAGO COUNTY, ILLINOIS; SITUATED IN WINNEBAGO COUNTY, ILLINOIS.

Parcel Number: 12-04-306-007

under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), and United States Code, Section 2461(c).

A TRUE BILL:

FOREPERSON

ACTING UNITED STATES ATTORNEY